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EXAMINER

DEJESUS, LYDIA M

ART UNIT PAPER NUMBER

2859

DATE MAILED: 05/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/682,843

Applicant(s)

DESAI ET AL.

Examiner

Lydia M. De Jesús

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 15-31 is/are rejected.
- 7) ☒ Claim(s) 13 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Objections

2. Claims 2, 10 and 28 are objected to because of the following informalities:

In the previous Office action, claims 2 and 10 were objected to due to the lack of antecedent basis for the limitation "at least one annular ring of the housing". In response, an amendment has been submitted by Applicant to recite "an at least one annular ring of the housing". To be more precise, it is considered that the language in claims 2, 10 and 28 should be further clarified to set forth a relationship between the housing and said at least one annular ring.

For example, examiner suggests that after the limitation "a housing adapted to receive the first and second indicator sticks within the housing" --, said housing including at least one annular ring -- or similar language be added and that the limitation "an at least one annular ring of the housing" should be amended to read --said at least one annular ring of the housing--, such that the resulting portions of the claim language read:

<a housing adapted to receive the first and second indicator sticks within the housing,
said housing including at least one annular ring;>

and

<a pair of collets having threads, each collet rotatably coupled to said at least one annular ring of the housing>

Appropriate correction is required.

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3. Claims 13 and 14 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

In this case, since claim 10 is directed to a temperature indicator stick holder and does not positively claim the temperature indicator sticks, see for example the limitation “a housing adapted to receive two temperature indicator sticks within the housing” recited in claim 10, and claim 13 relates to features of the temperature indicator sticks, it is considered that claim 13 fails to further limit the dual temperature indicator stick holder of claim 10. Claim 14 is objected to due to its dependence upon the language of claim 13.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-9 and 28-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The language of said claims is confusing because the preamble of the claims is directed to a stick, in this case a dual temperature indicator stick, whereas the language of the claim 1 for example further recites a first stick and a second stick. It is suggested that the preamble of the claims be directed to -a dual temperature indicator stick assembly-, or to – a dual temperature

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indicating stick apparatus—as recited for example in the language of claim 16, as Applicant considers appropriate, in order to avoid confusion between these terms.

Similarly, the language of claims 22-27 is confusing because the preamble of the claims is directed to a method to provide a dual temperature indicator stick whereas the body of the claim recites separate steps of forming a first and second indicator sticks. It is suggested that the preamble of said claims be directed to –a method to provide a dual temperature indicator stick assemble—in order to be consistent the language of line 6 of said claim and to avoid confusion between said terms.

Moreover, Claims 6 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the relationship between the collet and the connector.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 16-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kliewer [U.S. Patent 3,479,876].

Kliewer discloses a dual temperature indicator stick apparatus, shown in Figure 5 as a modification of the first embodiment shown in Figures 1-4, the apparatus comprising: first and

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second means [30] for indicating a first and second temperatures (see lines 34-40 of column 3); and means for retaining [12a] the first means [30] to the second means [30] to form a single indicator stick capable of indicating at least two temperatures and extending the first means without affecting the position of the second means relative to the means for retaining (see for example Figure 4 illustrating the operation of the first embodiment disclosed by Kliever).

The apparatus further comprises a means for aligning [18a] the first and second indicating means along an axis; a means for resisting rotational movement [52] of the first and second means about an axis; means for controlling movement [56 + 58] of the first and second means [30], wherein said first and second means comprise a first and second temperature indicator sticks/rods [30] the means for retaining the first means to the second means comprises a connector [46].

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-5, 7-12, 15, 22-26, 28-29 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang in view of OMEGAMARKER® Temperature Test Kit [hereinafter OMEGAMARKER®].

Wang shows a dual crayon holder assembly comprising: a first crayon [30], a second crayon [30] and a connector [10] physically connecting the first and second crayons in a single assembly. Wang also teaches holding in said assembly two crayons of different color (see

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column 2, lines 66-67). The holder assembly further comprises a resistance mechanism [20 +40 +11 +12] attached to the connector limiting rotational movement of the crayons about an axis, said resistance mechanism including a plurality of flanges [23].

The connector comprises first element [10 connected to 50 as shown in Figure 1] and a second element/remaining end piece [50] shown in Figure 1, each having a marking end and a union end. It is considered that the union end of the first element [10] is configured to slidingly secure into the union end of the second element/end piece [50] such that said union ends thread together to attach the first element to the second element. The connector also comprises a pair of collets, in this case the collar used as end pieces [50], each coupled to a threaded annular ring of the housing, wherein each of the pair of collets being configured to engage separate temperature indicator sticks [30] upon rotation of the collet around the housing. As shown in Figure 1, said connector prevents contact between said first and second crayons and allows said first element and second elements to be independently operable. As shown in Figure 1, each of the collets has threads attached to the connector and is configured to engage one of the temperature indicator sticks in the housing (see lines 37-42 of column 2).

OMEGAMARKER® discloses a kit of temperature indicator sticks in the form of crayons of different colors and each temperature indicator stick melts at a predetermined temperature. OMEGAMARKER® also shows the use a holders for each crayon.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the holder assembly of Wang for two different indicator sticks in the OMEGAMARKER® kit, each of a different melting temperature and color, as suggested by Wang, in order to provide an indicator assembly for marking two commonly used thresholds.

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With respect to claims 22-26: It is considered that the method steps recited in said claim will be performed during the normal process of making the dual temperature indicator stick of the combination of Wang and the OMEGAMARKER® kit.

11. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wang in view of OMEGAMARKER® as applied to claims 1-5, 7-12, 15, 22-26, 28-29 and 31 above, and further in view of Anderson.

Wang and OMEGAMARKER® together disclose a dual temperature indicator stick which will result from the steps recited in claims 22-26, but fail to show said first and second indicator sticks being formed in an oval shape to provide a volume space for indicator stick residue within the two threaded members.

However, Anderson teaches that it is very well known in the art to form a crayon having a non-roll, symmetrical shape. In the case of Anderson the cross section of the crayon is triangular in order to allow more crayons to be arranged in a package. However, it is considered that the teaching of Anderson with respect to forming a crayon having a cross section that prohibits rolling, in a broad sense, would also result from other non-circular shapes including an oval.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of providing a dual temperature indicator stick of the combination of Wang and OMEGAMARKER® to include the step of forming the first and second indicator sticks having a non-circular cross section, as suggested by Anderson, in order to further prevent rotation of the indicator sticks within the connector causing either of the sticks to be disengaged from the connector. The selection of a particular shape for the sticks, in this case

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an oval, is merely considered to be a choice of design since the selection of any among a number of non-circular shapes will have the same result of preventing rotation of the sticks within the connector and is not considered to affect the operation of the resulting stick assembly.

Allowable Subject Matter

12. It is noted that upon a revision of the definition of the term “collet” i.e., a collar, which differs in scope from the description for the “collet” elements provided in the disclosure, it is considered that the connecting device shown by Wang in the combination of Wang and the OMEGAMARKER® kit discussed above in paragraph 11 includes a pair of collets as recited in claim 2, 5 and 8. Furthermore, upon revision of the language of claims 22-26, as discussed above in paragraph 11, it is considered that the method steps recited in said claims will be performed during the normal process of making the dual temperature indicator stick holder of the combination of Wang and the OMEGAMARKER® kit. In regards to claim 27, the indicated allowability of claim 27 is withdrawn in view of the newly discovered reference to Anderson.

Hence, grounds for rejection of said claims are presented above in paragraph 10 and the allowable subject matter previously indicated for said claims is hereby withdrawn.

13. Claims 13 and 14 would be allowable if rewritten to overcome the objection(s) set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

14. Claim 30 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

15. Applicant is advised that should claim 30 be found allowable, claim 6 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application

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are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lydia M. De Jesús whose telephone number is (703) 306-5982. The examiner can normally be reached on 12:30 to 8:00 p.m., Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (703) 308-3875. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 305-3431 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.



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Supervisory Patent Examiner
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LDJ
May 7, 2003